EXHIBITS

A

Carl Davis v. BSH Home Appliances Corporation - Case No. 01-16-0001-9422

1 message

<ch@carlhornlaw.com> Tue, Nov 1, 2016 at 11:58 AM
To: Serafin, Allison E. (Raleigh) <Allison.Serafin@jacksonlewis.com>, Carl Davis <muzzy70muz@gmail.com>
Cc: candacecrawford@adr.org <candacecrawford@adr.org>, Federmack, Jason V. (Raleigh) <Jason.Federmack@jacksonlewis.com>, Spratt, Kathryn (Raleigh) <SprattK@jacksonlewis.com>

Thank you, Ms. Serafin. Mr. Davis, as I stated earlier, your Response to the Motion To Dismiss should be mailed to me on or before 14 days after you receive the hard copies which were sent to you yesterday. You may send it to me by regular mail rather than by overnight or certified mail, which are more expensive.

As to the Response to BSH's Answer and Separate Defenses, no Response to that document is necessary. (That was their Answer to your claims.) And as for your request for an expedited hearing, if the Motion To Dismiss is granted there will be no hearing. If it is denied in whole or in part, I am open to scheduling the hearing at an earlier date if we can find a time which is also acceptable to BSH. In any event, we will hold off on having that conversation until after the Motion To Dismiss is resolved.

And as before, best regards to each receiving this message.

Carl Horn, III

Attorney & Counselor at Law
2810 Wamath Drive
Charlotte, NC 28210

(704) 591-6398
ch@carlhornlaw.com
www.carlhornlaw.com

> —— Original Message ——
> Subject: RE: Carl Davis v. BSH Home Appliances Corporation - Case No.
> 01-16-0001-9422
> [Quoted text hidden]

COURIER SERVICE Carl Davis v. BSH Home Appliances Corporation - Case No. 01-16-0001-9422

1 message

<ch@carlhornlaw.com> Tue, Nov 8, 2016 at 3:40 PM
To: Carl Davis <muzzy70muz@gmail.com>, Serafin, Allison E. (Raleigh) <Allison.Serafin@jacksonlewis.com>
Cc: candacecrawford@adr.org <candacecrawford@adr.org>, Spratt, Kathryn (Raleigh) <SprattK@jacksonlewis.com>, Federmack, Jason V. (Raleigh) <Jason.Federmack@jacksonlewis.com>

Courier service is fine, too, Mr. Davis. I just want to make sure you receive it and have an opportunity to fully respond. And yes, Ms. Serafin, you are granted an extension for filing your Reply until the date after the Thanksgiving holidays you requested.

Carl Horn, III
Attorney & Counselor at Law
2810 Wamath Drive
Charlotte, NC 28210

(704) 591-6398
ch@carlhornlaw.com
www.carlhornlaw.com

> ------ Original Message ------
> Subject: RE: COURIER SERVICE Carl Davis v. BSH Home Appliances Corporation - Case No. 01-16-0001-9422
> From: Carl Davis <muzzy70muz@gmail.com>
> Date: Tue, November 08, 2016 3:02 pm

To: "Serafin, Allison E. (Raleigh)" <Allison.Serafin@jacksonlewis.com>
Cc: "candacecrawford@adr.org" <candacecrawford@adr.org>, "Spratt, Kathryn (Raleigh)" <SprattK@jacksonlewis.com>, "Federmack, Jason V.

[Quoted text hidden]

Carl Davis v. BSH Home Appliances Corporation - Case No. 01-16-0001-9422

1 message

<ch@carlhornlaw.com> Thu, Nov 17, 2016 at 9:08 AM
To: Carl Davis <muzzy70muz@gmail.com>, Serafin, Allison E. (Raleigh) <Allison.Serafin@jacksonlewis.com>
Cc: candacecrawford@adr.org <candacecrawford@adr.org>, Spratt, Kathryn (Raleigh) <SprattK@jacksonlewis.com>, Federmack, Jason V. (Raleigh) <Jason.Federmack@jacksonlewis.com>

Considering that you are representing yourself, Mr. Davis, and that your response depends on whether or not your case is dismissed, I somewhat reluctantly agreed to allow your requested extension. However, if you can finish and file it sooner, please do.

Carl Horn, III
Attorney & Counselor at Law
2810 Wamath Drive
Charlotte, NC 28210

(704) 591-6398
ch@carlhornlaw.com
www.carlhornlaw.com

> ------ Original Message ------
> Subject: RE: Carl Davis v. BSH Home Appliances Corporation - Case No.
> 01-16-0001-9422
> From: Carl Davis <muzzy70muz@gmail.com>

Date: Wed, November 16, 2016 10:33 am
To: "Serafin, Allison E. (Raleigh)" <Allison.Serafin@jacksonlewis.com>
Cc: "candacecrawford@adr.org" <candacecrawford@adr.org>, "Spratt, Kathryn (Raleigh)" <SprattK@jacksonlewis.com>, "Federmack, Jason V.
[Quoted text hidden]

Representing Management Exclusively in Workplace Law and Related Litigation

jackson | lewis
Attorneys at Law

Jackson Lewis P.C.
3737 Glenwood Avenue, Suite 450
Raleigh, North Carolina 27612
Tel 919 760-6460
Fax 919 760-6461
www.jacksonlewis.com

ALBANY, NY
ALBUQUERQUE, NM
ATLANTA, GA
AUSTIN, TX
BALTIMORE, MD
BIRMINGHAM, AL
BOSTON, MA
CHICAGO, IL
CINCINNATI, OH
CLEVELAND, OH
DALLAS, TX
DAYTON, OH
DENVER, CO
DETROIT, MI
GRAND RAPIDS, MI
GREENVILLE, SC
HARTFORD, CT
HONOLULU, HI*
HOUSTON, TX
INDIANAPOLIS, IN
JACKSONVILLE, FL
KANSAS CITY REGION
LAS VEGAS, NV
LONG ISLAND, NY
LOS ANGELES, CA
MADISON, WI
MEMPHIS, TN
MIAMI, FL
MILWAUKEE, WI
MINNEAPOLIS, MN
MONMOUTH COUNTY, NJ
MORRISTOWN, NJ
NEW ORLEANS, LA
NEW YORK, NY
NORFOLK, VA
OMAHA, NE
ORANGE COUNTY, CA
ORLANDO, FL
PHILADELPHIA, PA
PHOENIX, AZ
PITTSBURGH, PA
PORTLAND, OR
PORTSMOUTH, NH
PROVIDENCE, RI
RALEIGH, NC
RAPID CITY, SD
RICHMOND, VA
SACRAMENTO, CA
SALT LAKE CITY, UT
SAN DIEGO, CA
SAN FRANCISCO, CA
SAN JUAN, PR
SEATTLE, WA
ST. LOUIS, MO
STAMFORD, CT
TAMPA, FL
WASHINGTON, DC REGION
WHITE PLAINS, NY

*through an affiliation with Jackson Lewis P.C., a Law Corporation

DIRECT DIAL: (919) 760-6466
EMAIL: allison.serafin@jacksonlewis.com

December 7, 2016

VIA FEDERAL EXPRESS
Carl E. Davis
143 Davis Hill Lane
Trenton, NC 28585

Re: *Carl Davis v. BSH Home Appliances Corporation*
Case No.: 01-16-0001-9422

Dear Mr. Davis:

Pursuant to the scheduling conference held on September 22, 2016, the Arbitrator requested copies of the relevant documents from the civil action in the United States District Court, Eastern District of North Carolina, including but not limited to Plaintiff's Complaint.

On October 20 2016, a copy of the entire record was sent to you. Enclosed are the filings with the Court since that date.

Ms. Tanisha Mitchell of the AAA is copied on this correspondence without a copy of the filings. However, if necessary, Respondent will supply a complete copy of the record to Ms. Mitchell.

Thank you for your kind attention to this matter.

Sincerely,

JACKSON LEWIS P.C.

Allison Serafin

Allison E. Serafin

AES/ks
Enclosures
cc: Tanisha Mitchell (via email w/o enclosures)
Judge Carl Horn

THIS CAME WITH ABOUT 25 PAGES!

Representing Management Exclusively in Workplace Law and Related Litigation

jackson | lewis
Attorneys at Law

Jackson Lewis P.C.
3737 Glenwood Avenue, Suite 450
Raleigh, North Carolina 27612
Tel 919 760-6460
Fax 919 760-6461
www.jacksonlewis.com

ALBANY, NY
ALBUQUERQUE, NM
ATLANTA, GA
AUSTIN, TX
BALTIMORE, MD
BIRMINGHAM, AL
BOSTON, MA
CHICAGO, IL
CINCINNATI, OH
CLEVELAND, OH
DALLAS, TX
DAYTON, OH
DENVER, CO
DETROIT, MI
GRAND RAPIDS, MI
GREENVILLE, SC
HARTFORD, CT
HONOLULU, HI*
HOUSTON, TX
INDIANAPOLIS, IN
JACKSONVILLE, FL
KANSAS CITY REGION
LAS VEGAS, NV
LONG ISLAND, NY
LOS ANGELES, CA
MADISON, WI
MEMPHIS, TN
MIAMI, FL
MILWAUKEE, WI
MINNEAPOLIS, MN
MONMOUTH COUNTY, NJ
MORRISTOWN, NJ
NEW ORLEANS, LA
NEW YORK, NY
NORFOLK, VA
OMAHA, NE
ORANGE COUNTY, CA
ORLANDO, FL
PHILADELPHIA, PA
PHOENIX, AZ
PITTSBURGH, PA
PORTLAND, OR
PORTSMOUTH, NH
PROVIDENCE, RI
RALEIGH, NC
RAPID CITY, SD
RICHMOND, VA
SACRAMENTO, CA
SALT LAKE CITY, UT
SAN DIEGO, CA
SAN FRANCISCO, CA
SAN JUAN, PR
SEATTLE, WA
ST. LOUIS, MO
STAMFORD, CT
TAMPA, FL
WASHINGTON, DC REGION
WHITE PLAINS, NY

*through an affiliation with Jackson Lewis P.C., a Law Corporation

DIRECT DIAL: (919) 760-6466
EMAIL: allison.serafin@jacksonlewis.com

December 8, 2016

VIA CERTIFIED MAIL (7015 0640 0007 6922 1114)
AND EMAIL (muzzy70muz@gmail.com)
Carl E. Davis
143 Davis Hill Lane
Trenton, NC 28585

Re: *Carl Davis v. BSH Home Appliances Corporation*
Case No.: 01-16-0001-9422

Dear Mr. Davis:

Please find enclosed for service, a copy of *Respondent's Reply in Support of Respondent's Motion to Dismiss This Action With Prejudice Pursuant to Fed. R. Civ. P. 12(b)* filed in the above-referenced matter.

Sincerely,

JACKSON LEWIS P.C.

Allison E. Serafin

AES/ks
Enclosure
cc: Judge Carl Horn (via email)
Tanisha Mitchell (via email)

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

CARL DAVIS,	:	
Complainant,	:	Case No. 01-16-0001-9422
v.	:	**RESPONDENT'S REPLY IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS THIS ACTION WITH PREJUDICE PURSUANT TO FED. R. CIV. P. (12)(b)**
BSH HOME APPLIANCES CORPORATION,	:	
Respondent.	:	

NOW COMES Respondent, BSH Home Appliances Corporation (hereinafter "BSH"), through undersigned counsel, and pursuant to the Scheduling Order in this Tribunal respectfully submits this *Reply In Support of Respondent's Motion to Dismiss This Action With Prejudice, ("Motion to Dismiss"), Pursuant to Fed. R. Civ. P. (12)(b).* Respondent submitted its *Motion to Dismiss* and supporting Memorandum on October 31, 2016, setting forth the bases for this Tribunal to grant Respondent's Motion. On December 2, 2016, Respondent received Complainant's Response dated November 30, 2016. In Complainant's Response, Complainant asserts that:

1. Complainant be permitted discovery based on unsupported speculation of fraudulence; and
2. Contract principals allow Complainant to dispense with the arbitration time limit.

Complainant filed a "Motion for Clarification" in the stayed civil action in this matter (Civil Action No. 4:15-cv-103-FL, "EDNC"), on the same day that Complainant dated his Response in this Tribunal. DE # 47. In his "Motion for Clarification," Complainant states that his claim of retaliation is against TESI and that his claim against BSH is "about a violation of the ADA." Id. To the extent Claimant's representation to the EDNC clarifies his sole cause of action against

BSH is an ADA violation, Claimant's matter in this Tribunal is subject to dismissal *with prejudice* as to BSH because any ADA claim at this point is untimely.

Respondent submits this Reply brief for the sole purpose of addressing Complainant's assertions set forth in his Response and noting that Complainant's recent clarification in the EDNC civil action subjects Complainant's "clarified" claim against BSH to dismissal *with prejudice* as well.

I. Complainant's unsupported assertions related to a fraudulent handbook are unsupported and meaningless.

Complainant does not dispute the facts set forth by Respondent. Complainant's Response P. 1. Complainant is bound to arbitration based on the terms of the "DRP." BSH provided uncontested facts and ample proof that Complainant received copies of the BSH DRP (Ex. 1):

- On August 3, 2003, the date Complainant was hired at BSH, Complainant signed a form attesting to his receipt of the 2000 DRP. Exhibit 1, C-E.[1]
- In 2005, when BSH promulgated an amended DRP, (identical to the 2000 DRP with the exception of fee allocations), Complainant signed an acknowledgement that he received the handbook that references the revised DRP and directs the reader to "Addendum I," which contained the full revised DRP. Ex. 1, A, B.
- Thereafter Complainant continued his employment with BSH which indicates his implied assent to the terms of the DRP.

Under North Carolina law, "continued employment with actual notice of the implementation of a dispute resolution program evidences an employee's mutual assent to the binding arbitration agreement contained therein." Hightower v. GMRI, Inc., 272 F.3d 239, 243

[1] Plaintiff also received a step by step explanation entitled, "Question and Answer" addressing BSH's DRP. Ex. 1, E.

(4th Cir. N.C. 2001) quoting King v. Oakwood Home, Inc., No. Civ. 1:99 CV0059, 2000 WL 1229753 (M.D.N.C. Aug. 3, 2000), additional citations omitted.

Complainant's claim against BSH is subject to dismissal despite any unsupported allegation that Complainant did not "receive" or "sign for" a handbook. Complainant's acknowledgment of the 2005 handbook is not at issue. Complainant's challenge to the signed receipt of a handbook is irrelevant to this matter and discovery into the issue of a "signature" is useless. BSH has demonstrated that Complainant had actual notice of the binding DRP, and that Complainant thereafter continued employment, which evidences the parties' assent to the binding terms of the DRP. Ex. 1, A-E. Complainant has provided absolutely no reason to challenge the parties' mutual assent to the binding DRP. Complainant submitted a five page Response and 141 pages of documents accompanying his Response. Complainant's Response and documentation wholly fail to substantiate any basis to challenge the validity, contents and enforceability of the binding DRP.

Even if Complainant demonstrated any proof of any alleged "altering" or "falsification" of a handbook signature page, which Respondent denies, Complainant's argument to pursue discovery still fails.[2] Our North Carolina Courts have recognized that an unsupported allegation of an "altered" and/or "fraudulent" signature on an employer's copy of a signature acknowledging receipt of a handbook containing a DRP is "unconvincing." Jackson v. Univ. of Phoenix, Inc., 2014 U.S. Dist. LEXIS 21175 (E.D.N.C. Feb. 17, 2014) internal citations omitted.[3] Here, BSH has proffered substantive proof that Complainant received the DRP upon his initial hire in 2003 and again in 2005.[4] As such, arguments as to fraudulence, ***which are vehemently denied***, are neither relevant nor persuasive.[5] Complainant produced 141 pages of documentation apart from his five page Response - - all of which is unverified. None of the 141 pages support any arguments to pursue discovery on any bases. In contrast, BSH provided the Declaration of John Wilson, BSH Human Resources Manager and records custodian, under penalty of perjury, attesting to the authenticity of all documents supporting BSH's Motion to Dismiss. (Ex. 1 A-E). Discovery into the signature of a handbook cannot overcome the proof that Complainant was aware of and agreed to the binding terms of BSH's DRP.

---

[2] Complainant asserts that a date stamp on Complainant's Response Exhibit B supports his allegations that BSH "altered" documents. Complainant's reference to his Exhibit B does not acknowledge Respondent's Declaration identified as Exhibit 1 to the Motion to Dismiss. Additionally, Complainant conveniently omits that this date stamp is merely a print stamp resulting from the date that document was printed. DE # 18, P. 3 FN 2.

[3] But see, DE # 10, P. 5 FN 3, January 14, 2016. Judge Flanagan's position as to Jackson at that time was based on Complainant's "then" argument that he "never signed the form." DE # 17 p. 2, Affidavit of Carl Davis, August 20, 2015. Complainant has since changed his position to allege that his signature is "forged." As such, Jackson is squarely on point here and Complainant's unsupported allegations of "forged" or "altered" signature are "unconvincing."

II. Complainant is bound by the binding terms of the DRP including the uncontested time limit, which Complainant failed to follow.

As set forth in the preceding section, the parties are bound to a valid and binding DRP. The DRP has a clearly expressed time limit that neither party contests. Complainant failed to bring this matter to arbitration pursuant to the time limit of the DRP. Complainant fails to offer any legitimate basis to overcome his failure to comply with the DRP time limit. As such, Complainant's matter is subject to dismissal *with prejudice*.

Complainant's reliance on case law to support his "time is of the essence" argument is misplaced. The cases cited by Complainant address specific performance related to the sale of real estate and the sale of goods governed by the Uniform Commercial Code. Fletcher v. Jones, 314 N.C. 389 (1985) addresses the sale of real property; D.G. II, LLC v. Nix 211 N.C. App. 332, (2011) addresses the sale of a boat. Specific performance and/or "time is of the essence" are principles

[4] Accord, Order DE # 39, P. 9, May 18, 2016.

[5] Judge Flanagan previously addressed Complainant's allegations of falsification by BSH and found: "Plaintiff's assertion of misconduct is both very serious and baseless on the record before the court." DE # 39.

related to performance on a contract of purchase and sale. These principals are not applicable to the enforcement of an arbitration agreement.

While Complainant takes issue with Respondent's reliance on Chao v. Virginia Dept. of Transportation, 291 F. 3d 276 (4th Cir. 2002), Chao is absolutely on point. Here, the time limits in the BSH DRPs afford Complainant one year from the date of the alleged claim, or, a longer time subject to statutory limitations. In Chao, the Fourth Circuit held that any invocation of equity to the strict application of the statute of limitations "must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules..." Id at 283. As explained in Respondent's Memorandum Supporting the Motion to Dismiss, Complainant failed to file within the time limits proscribed in the DRP. See Respondent's Memorandum P. 14, table calculating relevant deadlines. Even allowing for the most generous interpretation of the deadline ***with equitable tolling***, Complainant missed the deadline by over 30 days.

III. Complainant's assertion that he filed his civil action timely to support a tolling argument is meaningless.

Complainant asserts that he filed this civil action "timely" and in "good faith." Complainant's filed civil action has no bearing on any tolling argument.

On the same day Complainant dated his Response in this arbitration, Complainant filed a Motion for Clarification in the pending civil action in the EDNC, (currently stayed pending the arbitration), asserting that his retaliation claim is against TESI only and that his claim against BSH is "about a violation of the ADA." DE # 47. To the extent Complainant acknowledges that his sole cause of action against BSH is an ADA violation, Complainant's claim is subject to dismissal for additional reasons. Complainant's Complaint does not address a claim of an ADA violation. See DE # 1. As such, any attempt to create a claim of an ADA violation years later in a Response to Respondent's Motion to Dismiss fails because Complainant failed to exhaust his administrative remedies and failed to file his civil action within the requisite statutory 90 days. 42 U.S.C. § 2000e. Accordingly, Complainant's claim in this matter is subject to dismissal on this basis as well.

Complainant fails to set forth any basis for equitable tolling beyond the deadline. Complainant continues to submit inconsistent, unsupported, self-serving allegations in this matter. Complainant's sole argument to allow equitable tolling points to Respondent's failure to show that Respondent suffered prejudice. Respondent's proffer of prejudice is hardly at issue here. The civil action court docket and the arbitration correspondence adequately show the prejudicial time, effort, and expense Respondent has endured for over two years while defending this matter.

IV. Complainant's Response is disturbing and fails to support Complainant's arguments.

Complainant's Response, as well as Complainant's produced documentation, fail to support Complainant's c. It is disturbing that Complainant makes repeated arguments of BSH "falsifying" documentation and making "misrepresentations" dating back to 2005, prior to Complainant's separation of employment. There is no credible explanation for why Complainant would persistently seek placement for an assignment with a Company that Complainant insists has "fabricated" and "falsified" records as far back as 2005 unless Complainant had an ulterior motive. To that end, Respondent respectfully requests this matter be dismissed in its entirety as to BSH *with prejudice.*

V. Conclusion[6]

For the foregoing reasons, Complainant's arbitration Demand was untimely under the time limits imposed by the DRP. Complainant's clarification that his claim as to BSH is an ADA

[6] Respondent's conclusion to the Motion to Dismiss has a scrivener's error in that Respondent asserted that this "Tribunal lacks the authority to arbitrate Complainant's claim..." Respondent argued to reach this forum, Respondent submits to the authority of this Tribunal, and Respondent respectfully requests the Arbitrator dismiss this matter *with prejudice* based on the arguments herein.

violation subjects Complainant's arbitration Demand to dismissal as well. Accordingly, this Tribunal should dismiss this matter with prejudice.

Respectfully submitted this the 8th day of December, 2016.

A Serafin

ALLISON E. SERAFIN
N.C. State Bar No. 31777
JASON V. FEDERMACK
N.C. State Bar No. 46014
Jackson Lewis P.C.
Attorneys for Respondent BSH Home Appliances
3737 Glenwood Avenue Suite 450
Raleigh, NC 27612
Telephone: (919) 760-6460
Facsimile: (919) 760-6461
Email: allison.serafin@jacksonlewis.com
Email: jason.federmack@jacksonlewis.com

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

CARL DAVIS,	:	
	:	
Complainant,	:	Case No. 01-16-0001-9422
	:	
v.	:	
	:	
BSH HOME APPLIANCES ASSOCIATION,	:	**CERTIFICATE OF SERVICE**
	:	
Respondent.	:	

The undersigned certifies that on December 8, 2016, the *Respondent's Reply in Support of Respondent's Motion to Dismiss This Action* *__With__* *Prejudice Pursuant to Fed. R. Civ. P. 12(b)* was electronically filed with the American Arbitration Association, and served on *Pro Se* Complainant/Complainant by electronic mail and by depositing a copy of same in the United States Mail, Certified Mail / Return Receipt Requested with postage prepaid, and addressed as follows:

Carl E. Davis
143 Davis Hill Lane
Trenton, NC 28585
Muzzy70muz@gmail.com
Pro Se Complainant/Complainant

JACKSON LEWIS P.C.

BY: ______________________

ALLISON E. SERAFIN
N.C. State Bar No. 31777
JASON V. FEDERMACK
N.C. State Bar No. 46014
Attorneys for Respondent BSH Home Appliances
3737 Glenwood Avenue Suite 450
Raleigh, NC 27612
Telephone: (919) 760-6460
Facsimile: (919) 760-6461
Email: allison.serafin@jacksonlewis.com
Email: jason.federmack@jacksonlewis.com

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration between:

Carl Davis,

Claimant

v. No. 01-16-0001-9422

BSH Home Appliances Corporation,

Respondent

ORDER DISMISSING ARBITRATION WITH PREJUDICE

THIS MATTER is before the undersigned Arbitrator on "Respondent's Motion To Dismiss This Action With Prejudice Pursuant To Fed. R. Civ. P. 12(b)" dated October 31, 2016. The pro se Claimant's Objection To Dismiss And Time Of Events and attachments, an uncaptioned narrative with attachments, and a separate "Response To Respondent's Motion To Dismiss This Action With Prejudice" were all received by the undersigned via certified mail on December 3, 2016. "Respondent's Reply in Support Of Respondent's Motion To Dismiss..." was filed and received by the undersigned on December 8, 2016. Thus, the Respondent's Motion To Dismiss is now ripe for resolution.

For the reasons stated herein, and for the further reasons stated in the Motion, "Respondent's Memorandum Of Support...," the "Declaration of John Wilson" and attachments thereto, and in Respondent's Reply, the Respondent's Motion To Dismiss must and shall be granted.

As the Respondent has credibly and clearly established, the Claimant's employment was conditioned upon his agreement to be subject to a Dispute Resolution Policy ("DRP") which required that most disputes between the employee and his employer be resolved first by submitting to mediation and, if not resolved in the mediation, by binding arbitration administered by the American Arbitration Association. The narrow exceptions concerning claims not subject to the DRP do not apply to the claims in this case.

The DRP clearly and unequivocally provides that arbitration must be initiated "within one year of the time the claim accrued or, in the case of a claimed statutory violation, the time limits imposed by the applicable statute of limitations, whichever is longer." The DRP also clearly provides that "failure to initiate arbitration within this time limit will forever bar any claim involving that dispute."

Despite the Claimant's unsupported protestations to the contrary, the record clearly establishes that he was given a copy of the DRP when he was first hired, as evidenced by his signature dated August 11, 2003; and that the DRP had the above quoted language in it in a section captioned in bold letters, "**Time Limits**." The record likewise clearly establishes that this identical language was included in an "Associate Handbook" – again in a section captioned in bold letters, "**Time Limits**" – which the Claimant also received, as evidenced by his signature dated June 23, 2005 on a form captioned "Receipt of Associate Handbook."

In addition to the two times that the Claimant received copies of the DRP while he was employed by the Respondent, the record establishes that he was given a copy of the Policy, including the "Time Limits" language, seven times since March 27, 2015, the date of the EEOC mediation conference during which he acknowledged receiving "the full Dispute Resolution Policy" (in his Declaration filed in U.S. District Court for the Eastern District of North Carolina). Thereafter, through a second copy sent to the EEOC at Claimant's request, a copy sent to Claimant after he improperly filed his *pro se* Complaint in U. S. District Court, and through the Respondent's subsequent pleadings filed in the District Court proceeding, the Claimant was provided a copy of the DRP six additional times. In other words, as Respondent urges, the record establishes that the Claimant has been given notice of the DRP and the time limits for initiating an arbitration proceeding on no less than nine occasions.

As Respondent also correctly notes in its Memorandum Of Law In Support of its Motion To Dismiss, in spite of all nine notices and the directive in Judge Flanagan's May 18, 2016 Order granting the Respondent's Motion To Compel Arbitration, the demand for arbitration – first made July 7, 2016 – was untimely. Specifically, the demand for arbitration of a claim of retaliation which allegedly occurred in August 2013 was not "within one year of the time the claim accrued"; and pursuant to 42 U.S.C. § 2000e-5(f)(1) the Claimant had 90 days (plus three days for mailing) from receipt of his Right To Sue letter to initiate a Title VII claim. In this case the EEOC issued Claimant's Right To Sue letter on March 31, 2015 – 461 days before Claimant made his demand for arbitration. Thus, the Claimant's demand for arbitration was clearly untimely under both the "one year" and the "statute of limitations" time limits to which the Claimant expressly agreed as a condition of his employment.

The Claimant's various submissions to the contrary, to the extent they are comprehensible, give various dates on which events he deems to be relevant occurred; asks the undersigned to "kick this [claim] back to regular court where [he] feel[s] it should be"; asserts that this is somehow "a workman comprehension issue [sic] instead of [a] dispute with BSH … [which] does not fall under the arbitration agreement"; and accuses BSH of having "a history of falsifying paperwork and trying to intimidate Witness/Attorneys." The obviously ghost-written "Response To Respondent's Motion To Dismiss This Action With Prejudice" argues more cogently but still unpersuasively that the Claimant should be allowed to conduct discovery on the "[v]alidity, [c]ontent, and [e]nforceability of the [a]lleged [a]rbitration [c]lause; and that even if the arbitration clause is valid and enforceable the demand for arbitration was timely.

NOW THEREFORE, FOR THE FOREGOING REASONS, Respondent's Motion To Dismiss is **GRANTED** and this Arbitration is hereby **DISMISSED WITH PREJUDICE.**

SO ORDERED, this 9th day of December, 2016.

s/Carl Horn, III
Arbitrator